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IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

Answer of California Defendants to Petition of Intervention on Behalf of the United States of America

and

Summary of the Controversy (Exhibit A)

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OUTLINE OF ANSWER

PAGE

Introduction 2

First Affirmative Defense—Defendants have the right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of waters of the Colorado River System under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Contracts of the Secretary of the Interior executed pursuant thereto 4

Second Affirmative Defense—Defendants have appropriative rights, recognized by the Boulder Canyon Project Act and protected by the Statutory Compact between the United States and California, to the beneficial consumptive use in California of not less than 5,362,000 acre-feet of Colorado River System water per annum, senior to the claims made by the United States to water for consumptive use, with certain exceptions 29

Traverse of the Allegations of the Petition 33

Traverse of Part One: Introduction and Background 33

Traverse of Part Two: Interests of the United States of America in the Colorado River System 36

Traverse of Part Three: Specific Response of the United States of America to the Pleadings of the Parties 41

Prayer 63

Summary of the Controversy (Exhibit A) 67

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA.

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego, by their duly authorized attorneys, jointly answer the Petition of Intervention on behalf of the United States of America as follows:

Introduction.

1.

The Petition of Intervention of the United States declares that by reason of the issues stated in this cause, the United States is and will be in grave doubt as to its rights and duties in connection with projects and rights of the United States within the Colorado River Basin, until a determination of these issues is had by this Court. Through facts pleaded in this Answer, defendants allege that these uncertainties and doubts were not in evidence at the time of the enactment of the Boulder Canyon Project Act (1928) of the Statutory Compact between the United States and California (1929), and in the period 1930-1934 when the United States negotiated the contracts with the California defendants which made the present state of development on the lower Colorado River possible, nor on numerous occasions since that period, pointed out by defendants, on which the Congress and agencies of the United States have had cause to inquire into projects affecting this Basin.

The Petition shows that substantially all of the waters of the Colorado River System in controversy among Arizona, California (and now Nevada) are under the physical control of the United States, inasmuch as they are intercepted and impounded in reservoirs owned by the United States, both on the main stream and on the Gila River. Moreover, by far the greater part of the water supply of the Lower Basin flows to it from the

Upper Basin. Plans have been put forward to impound this water in the Upper Basin by dams, which would be built by the United States, capable of retaining several years flow of the river. Reports in furtherance of these plans have been submitted to the Congress by the Department of the Interior, and Congressional Committees are currently considering the merits of legislation which would put these plans into effect. As understood by defendants, the Petition asserts certain rights of the United States to the waters of the Colorado River System, not only as against complainant and defendants but as against the other States of the Colorado River Basin as well.

In this Answer defendants state their affirmative defenses against these federal claims, as well as their traverse of the Government's allegations. So far as possible, this is done by cross-reference to the defendants' Answer to Arizona's Bill of Complaint.

2.

Defendants refer to their "Appendixes to the Answer" to Arizona's Bill of Complaint, cite various of these Appendixes throughout this Answer, and incorporate these Appendixes by reference as a part of their present Answer to the Petition of Intervention on behalf of the United States of America, as though the same were here set out at length.

FIRST AFFIRMATIVE DEFENSE.

Defendants Have the Right to the Beneficial Consumptive Use in California of 5,362,000 Acre-feet Per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto.

3.

The General Scope of the Boulder Canyon Project Act.

The Congress of the United States, by the terms of the Boulder Canyon Project Act (Appendix 2), hereinafter referred to as the "Project Act," undertook to impound and control the disposition of the water of the Colorado River, a navigable stream.

In general, this act:

(1) Authorized the construction of Hoover Dam and power plant (Sec. 1), but on condition (Sec. 4(b), par. 1) that the Secretary of the Interior provide for revenues, in advance of construction, by the sale of electric energy so as to liquidate the investment within fifty years. This was done by contracts with California entities, including the defendants City of Los Angeles and The Metropolitan Water District of Southern California, as hereinafter related.

(2) Authorized the construction of the All-American Canal (Sec. 1) from the Colorado River to Imperial and Coachella Valleys, but on condition (Sec. 4(b), par. 2) that the Secretary of the Interior first provide for revenues, in advance of construction, by repayment contracts under the reclamation law. Section 1 stipulated that no charge be made for the use, storage or delivery

of water in Imperial and Coachella Valleys, in recognition of the pre-existing rights of these areas in the waters of the Colorado River System. Contracts to repay the government's investment in the All-American Canal were made by defendants Imperial Irrigation District, Coachella Valley County Water District, and City of San Diego, as hereinafter alleged.

(3) Offered to California, upon certain conditions, a Statutory Compact (Sec. 4(a), par. 1), defining and limiting this State's rights to the waters of the Colorado River System, in terms of the quantities available, "for use in California." This was accepted by California, in the manner hereinafter described. A second paragraph of Section 4(a) authorized a compact among Arizona, California and Nevada, but no State accepted or ratified it.

(4) Authorized the Secretary of the Interior (Sec. 5) to enter into contracts for the storage and delivery of water at points to be agreed upon, on the river or All-American Canal, for permanent service, in conformity with the Colorado River Compact and the Statutory Compact between the United States and California, and directed that no person should have the use of stored water except by such contracts. Contracts pursuant to these provisions were made with defendants Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, and City of San Diego, as hereinafter alleged.

(5) Consented, on certain conditions, to the Colorado River Compact (Secs. 4(a), 13(a)), and subjected the rights of the United States and those claiming under it thereto (Secs. 8(a), 13(b), (c), (d)).

4.

Consent to the Colorado River Compact.

By the terms of the Project Act (Secs. 4(a), 13(a)), the Congress consented to the Colorado River Compact, signed by representatives of the seven States of the Colorado River Basin at Santa Fe, New Mexico, on the 24th day of November, 1922 (Appendix 1), either as a seven-state compact or as a six-state compact, to be accompanied, in the latter event only, by an agreement on the part of California to limit the consumptive use in California of waters of the Colorado River System as hereinafter described.

5.

Offer and Acceptance of a Statutory Compact with California.

(a) The Project Act (Sec. 4(a), par. 1) provided that it should not take effect unless and until (1) the seven States of the Colorado River Basin should have ratified the Colorado River Compact, and the President, by public proclamation, should have so declared, or (2) if the said seven States should fail to ratify the said Compact within six months from the date of the passage of the act (December 21, 1928), then until six of the States, including California, should have ratified the Compact, waived the requirement of seven-state ratification, and the President, by public proclamation, should have so declared, and further, until

> ". . . the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in

consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

(b) During the six-months period referred to in the Project Act, to wit, on March 4, 1929, the legislature of California enacted the legislation proposed by Section 4(a) of the Project Act (Appendix 3), on the following terms:

". . . in the event that the Colorado river compact . . . . is not approved within six months from the date of the passage of . . . the 'Boulder canyon project act' . . . by the legislatures of each of the seven states signatory thereto . . . . then when six of said states, including California, shall have ratified . . . and the President by public proclamation shall have so declared . . . the State of California as of the date of such proclamation agrees . . ."

to the proposal made by the Project Act.

(c) The State of California's acceptance of the Statutory Compact became effective only in consequence of the refusal of Arizona to ratify the Colorado River Compact, and if Arizona had made timely ratification of the Colorado River Compact, within six months of the ap-

proval of the Project Act, said Limitation Act, by its terms, would not have taken effect.

(d) At the expiration of six months following the passage of the Project Act, and pursuant to the authority vested in him by said act, and in accordance with the facts, the President, by public proclamation dated June 25, 1929 (Appendix 4), announced (1) that seven States had not ratified the Colorado River Compact within six months from the date of approval of the Project Act, (2) that six of the States, including California, had ratified the compact and waived the requirement of seven-state ratification, and (3) that California had met the requirements of the first paragraph of Section 4(a) of the Project Act, *i.e.*, the adoption of the California Limitation Act (Appendix 3).

(e) By said proclamation the President placed the Project Act, the Colorado River Compact as a Six-State Compact, and a Statutory Compact between the United States and California evidenced by the Project Act and the California Limitation Act (Appendix 3), in effect, and the said compacts since said date (June 25, 1929) have been, and now are, effective.

6.

Terms of the Statutory Compact Between the United States and California.

(a) During the consideration by the Congress of the successive bills which culminated in the enactment of the Boulder Canyon Project Act, the entire Boulder Canyon Project as an integrated plan was fully considered and made the subject of extensive hearings and floor debate. The plan which was the basis of Congressional

Investments and Obligations of the Defendant Public Agencies of the State of California in Works Served by Water Delivered by the United States Under Contracts With These Agencies (to nearest million dollars).

Palo Verde Irrigation District: Diversion works, canals, and distribution works	(See Note 1)
Imperial Irrigation District: All-American Canal and distribution work	$ 25,000,000[2]
Coachella Valley County Water District: All-American Canal and distribution works	27,000,000
Metropolitan Water District of Southern California: Parker Dam, Colorado River Aqueduct, and distribution works	321,000,000
City of Los Angeles: Reservoirs to receive Colorado River water, and related distribution works	9,000,000
San Diego (including San Diego County Water Authority): All-American Canal and San Diego extension of Colorado River Aqueduct	20,000,000
Subtotal	$402,000,000[3]

Notes:

[1]Palo Verde Irrigation District has expended an additional $6,000,000 on its works dependent on the waters of the Colorado River, but much of this was invested prior to its contract with the United States, and the entire sum is excluded from this tabulation.

[2]Imperial Irrigation District, in addition to its All-American Canal obligation of about $25,000,000 has invested about $29,000,000 in distribution and other works dependent on the Colorado River.

[3]If all the direct investments of the defendants in their water supply works were included, *i. e.*, Palo Verde Irrigation District's additional $6,000,000 and Imperial Irrigation District's additional $29,000,000, this total would become $437,000,000.

action included (1) the construction by the United States of Hoover Dam and the All-American Canal and works appurtenant to these structures, (2) the assumption by California agencies of financial obligations to repay the cost of these works, (3) the construction by California agencies with their own funds of the Colorado River Aqueduct, transmission lines and other works, and (4) the delivery from storage by the United States, under contract, of adequate supplies of water for the Colorado River Aqueduct, the Palo Verde Irrigation District and the All-American Canal. The water requirements of these California projects, now represented by the defendants herein, were well known to Congress to aggregate approximately 5,400,000 acre-feet per annum, substantially the quantities now evidenced by the water storage and delivery contracts hereinafter referred to. These requirements were encompassed by the expression "uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist," in the first paragraph of Section 4(a) of the Project Act. It was recognized by the Congress that this quantity was approximately 1,000,000 acre-feet per annum in excess of the 4,400,000 acre-feet per annum of waters apportioned by Article III(a) of the Colorado River Compact referred to in the Statutory Compact, and the Congress intended that, by the offer and acceptance of the Statutory Compact, the said 1,000,000 acre-feet of excess waters, to the extent that such waters might be physically available, should be made presently and permanently available by water delivery contracts for the service of these projects. The Congress recognized further that the Statutory Compact, in restricting California to the use of approximately 5,400,000 acre-feet per an-

num, would provide water only for the Colorado River Aqueduct, Palo Verde Irrigation District and the All-American Canal, and would require the abandonment of the claims of other California projects for which valid appropriations had been made, and which, together with those of the three projects above named, greatly exceeded 5,400,000 acre-feet per annum.

(b) California was induced to, and did, enact the Limitation Act and thus enter into the said Statutory Compact, in the light of the text of the Project Act and the legislative history thereof, and with the understanding that under the terms of the Colorado River Compact, the Project Act and the Statutory Compact, water in substantially the amounts now evidenced by the said water storage and delivery contracts would be made available for use in California, and that the United States would not impair its ability to perform such contracts by entering into agreements with others inconsistent with that understanding. Otherwise, the plan of the Project Act would have been infeasible. Water in substantially said quantities was, and is, essential to an economy in California able to sustain the contracts for electrical energy, and the contracts for repayment of the cost of the All-American Canal, upon which the financing of the Boulder Canyon project depended and depends. These facts were well known to, and recognized by, the Congress.

(c) California enacted the Limitation Act and thereby accepted the offer of a Statutory Compact in the light of its text and legislative history, which disclosed the following interpretations thereof:

(1) Said Statutory Compact authorized and permitted the Secretary of the Interior, on behalf of

the United States, to then contract to deliver from storage at Lake Mead to users in California, water up to the full quantities each year, stated in said Statutory Compact, and authorized and permitted users in California to then contract for and to presently receive and permanently use such waters in those quantities. Nothing in the Colorado River Compact or the Statutory Compact postpones or defers to 1963, or any other time, the authority of the United States and the defendants herein to contract with reference to, or the right of the defendants to use excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact.

(2) Said quantities are those required to enable the aggregate annual beneficial consumptive use in California (diversions less returns to the river) of not to exceed:

a. 4,400,000 acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus

b. One-half of all excess or surplus waters not apportioned by Article III(a) of the Colorado River Compact, including in such excess or surplus the waters referred to in Article III(b) of said Compact.

(3) The waters so contracted to be delivered by the United States are for permanent service and are available, among other purposes, to serve all uses under contracts made under the provisions of the Project Act and for the supply of any rights which existed in California as of June 25, 1929, the effective date of the Six-State Colorado River Compact

Other Investments and Obligations of California Entities Pursuant to Contracts With the United States Under the Boulder Canyon Project Act and Boulder Canyon Project Adjustment Act.

Hoover Dam: Energy contracts by which the repayment of the federal investment in Hoover Dam and power plant was underwritten by California power users	$196,000,000[4]
Electric transmission facilities built by California power users to perform their obligations to take Hoover Dam power	43,000,000
All-American Canal hydroelectric facilities	18,000,000
Subtotal	$257,000,000
Subtotal from previous page	402,000,000
Total	$659,000,000[5]

[4]The Government's investment in Hoover Dam and power plant is approximately $166,000,000. Of this, $25,000,000 is allocated to flood control and repayment is deferred until the balance of the investment is first repaid. In addition, however, the power rates are required to produce, during 50 years, $25,000,000 for payment to a "Colorado River Development Fund" in the federal treasury, and $30,000,000 for payment to Arizona and Nevada in lieu of taxes. (See the Boulder Canyon Project Adjustment Act: Act of July 19, 1940, 54 Stat. 774.) With these adjustments, the obligation reflected in the power contracts is approximately $196,000,000. The California contractors underwrote all of this, subject to the option of Arizona and Nevada to take, release, and take again from time to time, 35.2518% of the firm energy. (See H. Doc. 717, 80th Cong., p. 94.)

[5]The defendants' total investments and obligations undertaken in reliance on Government contracts, $659,000,000, compares with total investments dependent on the Colorado River in the amount of $694,000,000. (See Note 3.)

and the Statutory Compact between the United States and California.

(4) The said Statutory Compact does not provide for the reduction of said quantities in consequence of reservoir evaporation or other losses occurring prior to delivery of said waters at the points of diversion in California specified in the contracts hereinafter referred to.

7.

Performance of the Statutory Compact by the Principal Parties Thereto.

Prior to the time when Arizona claimed rights under the said Statutory Compact as a third party beneficiary thereof, and prior to the assertion by the United States of rights and claims adverse to defendants, now stated in the pending Petition of Intervention, the principal parties thereto (the United States and California) had confirmed and applied the meaning and intent thereof above stated, in the manner hereinafter described.

8.

Contracts of the Defendants With the United States.

(a) *Regulations of 1930.* On April 23, 1930, the Secretary of the Interior, pursuant to the authority vested in him by the Boulder Canyon Project Act, promulgated general regulations for the storage and delivery of water (Appendix 9). On November 5, 1930, he requested the Division of Water Resources of the State of California to recommend the proper apportionment, among the claimants in California, of the waters (stated in acre-feet per annum) to which California might be entitled

under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, in the following categories, as stated by the Secretary (H. Doc. 717, 80th Cong., p. A477):

> "I. Of the water which may be available to California by paragraph (a) of Article III of the Colorado River Compact . . .
>
> "II. Of the water which may be available to California by paragraph (b) of Article III of the Colorado River Compact . . .
>
> "III. Of the water which may be available to California over and above the foregoing . . ."

(b) *Seven Party Water Priority Agreement.* On August 18, 1931, pursuant to the request of the Secretary dated May 9, 1930, the defendant public agencies of the State of California entered into the so-called Seven Party Agreement (Appendix 10) establishing priorities, as among themselves, to the waters which might be available for use in California, and the Division of Water Resources of the State of California recommended to the Secretary of the Interior the inclusion of the same in the water delivery contracts into which the United States might enter with each of them.

(c) *Regulations of 1931.* On September 28, 1931, the Secretary of the Interior promulgated general regulations (Appendix 8) incorporating the foregoing recommendations. The said regulations are now in full force and effect with respect to the delivery of water from storage for use in California. Their full text appears as Appendix 8 and the effect of the schedule of priorities therein contained is tabulated below:

Priority No.	Agency and description	Annual quantity in acre-feet (beneficial consumptive use)
1.	Palo Verde Irrigation District—104,500 acres in and adjoining existing district	
2.	Yuma project (California division)—not exceeding 25,000 acres	
3.	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	3,850,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
4.	The Metropolitan Water District and/or City of Los Angeles	550,000
5.	(a) The Metropolitan Water District and/or City of Los Angeles	550,000
	(b) City and/or County of San Diego	112,000
6.	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	300,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
		5,362,000
7.	Agricultural use in the Colorado River Basin in California, as designated on Map 23000, U. S. Bureau of Reclamation.	All remaining water available for use in California.

The quantities tabulated aggregate 5,362,000 acre-feet per annum. To the extent of 962,000 acre-feet per annum, these are "excess or surplus waters" within the meaning of the Statutory Compact. These regulations authorize contracts to be made with the defendants for permanent service in that net quantity, for use in California, without provision for further reduction in consequence of reservoir or other losses occurring prior to delivery thereof in California; require that the uses of Indians in California (which are included as part of the requirements of the Yuma project and of the Coachella Valley County Water District), and the uses on public lands of the United States (which are included as part of the requirements of Palo Verde Irrigation District, Imperial Irrigation District and Coachella Valley County Water District) be charged against the uses available to California under the Colorado River Compact and the Statutory Compact; and direct that all beneficial consumptive uses shall be measured in terms of diversions less returns to the river.

(d) *Water delivery contracts.* Pursuant to the aforesaid statutory authority and in accord with the aforesaid regulations, the United States subsequently entered into contracts with the defendant public agencies of California for the delivery of water to them at stated points of diversion, in the quantities and in accord with the priorities stated in said regulations. These contracts are tabulated in paragraph 34 of Defendants' Answer to Arizona's Bill of Complaint, herein incorporated by reference as though fully stated, and the texts thereof appear in appendixes identified in that tabulation. Inherent in said contracts was and is the right to the present and perma-

nent use of excess and surplus waters, if such waters are physically available.

(e) *Hoover Dam power contracts.* Pursuant to the requirement of the first paragraph of Section 4(b) of the Project Act, that the Secretary of the Interior, in advance of construction, "make provision for revenues by contract" adequate to repay the Government's investment in Hoover Dam, the Secretary of the Interior, on April 26, 1930, entered into contracts with entities in California whereby they undertook to pay for, whether used or not, all of the firm energy to be produced by Hoover Dam. Defendant City of Los Angeles underwrote such an obligation with respect to approximately 33% of such firm energy, and defendant The Metropolitan Water District of Southern California with respect to approximately 36% of such firm energy (Appendix 20), the use thereof, in the case of that District, being restricted by the terms of its power contract to the pumping of water into and in the Colorado River Aqueduct. Said District assumed that obligation only on the clear understanding that such water would be made available concurrently with the District's obligation to pay for the power required to pump it. The satisfaction of that District's water delivery contracts (Appendixes 19, 21) as appears from the table of priorities above referred to, was then dependent to the extent of 550,000 acre-feet per annum upon the use of "excess or surplus waters" within the meaning of the Statutory Compact.

(f) *All-American Canal repayment contracts.* Pursuant to the provisions of the second paragraph of Section 4(b) of the Project Act, requiring the Secretary of the Interior, in advance of the construction of the All-

American Canal, to "make provision for revenues by contract or otherwise," to repay the government's investment therein, the Secretary entered into contracts with defendants Imperial Irrigation District (Appendix 13), City of San Diego (Appendixes 15, 23) and Coachella Valley County Water District (Appendix 16), whereby the United States agreed to deliver water pursuant to the regulations dated September 28, 1931 (Appendix 8), and to construct the All-American Canal to the capacity required to deliver these quantities, and these defendants agreed to repay the cost of the All-American Canal built to that capacity.[1] The water agreed to be delivered to San Diego, to enable the beneficial consumptive use of 112,000 acre-feet per annum, as appears from said table of priorities, was to be provided in its entirety from "excess or surplus" waters within the meaning of the Statutory Compact between the United States and California,[2] and the waters to be delivered to Imperial Irrigation District and Coachella Valley County Water District included 300,000 acre-feet per annum of water of that category. The All-American Canal was designed and constructed by the Department of the Interior to carry the quantities of water to which said defendants were entitled under the said regulations.

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[1]The All-American Canal contracts combine the water delivery features of Section 5 and the repayment requirements of Section 4(b) of the Project Act.

[2]The water rights of San Diego were subsequently merged with those of the Metropolitan Water District of Southern California. (Appendixes 24, 26), and it receives water as a part of that District through the Colorado River Aqueduct.

9.

Legislative and Administrative Interpretation of the Statutory Compact.

(a) *Boulder Canyon Project Appropriation Acts.* The contracts of the defendants and other entities in California with the United States, described in Paragraph 8 of this Answer, were reported by the Secretary of the Interior to the Congress and accepted by the Congress, in conformity with Section 4(b) of the Project Act, as the basis for the appropriation of more than $160,000,000 for the construction of Hoover Dam and power plant, and more than $50,000,000 for the construction of the All-American Canal, and the said sums were expended and the said dam and canal were constructed by the United States and are now in operation. Without the contracts of the defendants, attacked by Arizona in this action, the United States could not have built the Boulder Canyon Project upon the conditions prescribed by the Congress.

(b) *Colorado River Aqueduct Act.* In 1932 the Congress granted to the defendant, The Metropolitan Water District of Southern California, a right of way 250 feet in width across Government lands in Riverside, San Bernardino and Los Angeles Counties, together with other lands and rights of way, all for the purpose of constructing an aqueduct some 242 miles long of a capacity sufficient to transport water in the quantity so contracted for by the said Metropolitan Water District (Act of June 18, 1932, 47 Stat. 324).

(c) *Parker Dam Reauthorization Act.* In 1935 the Congress authorized the construction of the Parker Dam and ratified all contracts theretofore made in connection therewith (Appendix 5, Act of August 30, 1935, 49 Stat. 1028, p. 1039). Contracts so ratified included the contract (Appendix 22) under which The Metropolitan Water District had undertaken to finance the construction of Parker Dam for the specific purpose, among other things, of providing a diversion point for water so contracted to be delivered from storage, and also the contracts between the United States and The Metropolitan Water District for the delivery from storage of waters of the Colorado River (Appendixes 19, 21) and the contract for electrical energy from Hoover Dam (Appendix 20). The Parker Dam contract so ratified, like the District's Hoover Dam power contract, restricted the use of power to pumping water into and in the aqueduct.

(d) *Boulder Canyon Project Adjustment Act.* In the Boulder Canyon Project Adjustment Act (Act of July 19, 1940, 54 Stat. 774) the Congress authorized the amendment of the power contracts entered into under the Boulder Canyon Project Act. The Hoover Dam power and water delivery contracts were fully considered by the Congress during the consideration of this measure. On May 20, 1941, the Secretary of the Interior promulgated regulations thereunder, allocating a minimum of 17.5554% and a maximum of 36.9439% of the firm energy to be generated at Hoover Dam to the defendant City of Los Angeles and 35.2517% of such firm energy to the defen-

dant The Metropolitan Water District of Southern California, the latter specifically restricted to "pumping Colorado River Water into and in its aqueduct." (H. Doc. 717, 80th Cong., p. A279.) On May 29, 1941, said City and District entered into contracts with the United States (*id.*, pp. A301, A369, A417) pursuant to said regulations, whereby they committed themselves to pay for said energy. The firm financial obligation of the Metropolitan Water District thereunder is not less than $75,000,000, for energy which it may use only in pumping the water to be delivered to it by the United States pursuant to the water delivery contracts between the United States and that District. (Appendixes 19, 21, 24.)

(e) *San Diego Aqueduct Legislation.* In a contract between the United States and the City of San Diego (October 17, 1945; Appendix 25), the United States undertook to build an aqueduct "running from a connection with the Colorado River aqueduct of the Metropolitan Water District of Southern California near the west portal of San Jacinto tunnel in Riverside County, to San Vicente Reservoir, in San Diego County. . . . ." The contract rights of the City of San Diego, 112,000 acre-feet per annum (Appendix 23), being in the fifth priority (Appendix 10), could not be satisfied from the 4,400,000 acre-feet of water apportioned to the Lower Basin by Article III(a) of the Colorado River Compact permitted and authorized to be used in California, but could be supplied only from "excess or surplus waters unapportioned by the Compact." Said contract was ratified by

the Congress (Act of April 15, 1948, 62 Stat. 171; Appendix 6). The Congress subsequently authorized a second barrel to be added to this Aqueduct by the United States (Act of Oct. 11, 1951, 65 Stat. 404; Appendix No. 7). The contract for the construction of the second barrel was entered into between the United States and the San Diego County Water Authority, dated April 1, 1952 (Appendix 27). The combined capacity of the two barrels is in excess of 200 c. f. s., capable of transporting 112,000 acre-feet per annum.

(f) *All-American Canal Appropriation Acts.* The requirements of the All-American Canal, built for the service of Imperial Irrigation District and Coachella Valley County Water District, not only were made known to the Congress through reports and House documents throughout a long period of years commencing in 1918, but said canal was designed and built by the United States to carry the full quantities of water which it had agreed to deliver from storage to Imperial Irrigation District, Coachella Valley County Water District, lands of the Yuma Project in California, and the City of San Diego. These requirements approximate 4,000,000 acre-feet per annum. Such requirements and capacity and the progress of construction were reported to the Congress during the consideration of more than twenty appropriation acts, between the years 1934 and 1952, and money was appropriated by the Congress in knowledge and approval thereof.

(g) *Coachella Distribution Works Authorization.* The Act of June 26, 1947, 61 Stat. 183, reauthorized appropriations for the construction of distribution and drainage systems in the Imperial and Coachella Valleys. During the consideration of this measure, the contracts of defendants Imperial Irrigation District and Coachella Valley County Water District were again reported and referred to in the Congress. The Coachella Valley County Water District participates in the 300,000 acre-feet of excess and surplus waters referred to in the sixth priority of the Interior Department regulations (Appendix 8), as well as in waters in the second priority, subject to the prior rights of Imperial Irrigation District. On July 22, 1947, the Secretary of the Interior transmitted to the President and to the Congress (H. Doc. 415, 80th Cong., reprinted in H. Doc. 717, 80th Cong., p. A659) a finding of feasibility of a "distribution system and appurtenant protective works" for the Coachella Valley Division of the All-American Canal. In this finding, which had the effect of an authorization for construction under Sections 7(b) and 9(a) of the Reclamation Project Act of 1939, the Secretary reported the water requirements of the defendant Coachella Valley County Water District, and the progress of construction of the Coachella Branch of the All-American Canal, in accordance with that district's water delivery contract with the United States (Appendix 16). On December 22, 1947, a supplemental contract, relating to repayment of cost of these distribution works (Appendix 17), was entered into between the United States and

Coachella Valley County Water District, appropriations for the construction of these works were made by the Congress, and said works were constructed and are now in operation.

(h) In the manner herein recited, and in other ways, the principal parties to the said Statutory Compact, the United States and California, have confirmed the interpretation, meaning and intent thereof.

10.

Investments by the Defendants.

Long before Arizona asserted her present interpretations of the said Statutory Compact, or the United States asserted the claims or expressed the doubts stated in its Petition for Intervention, the California water-using agencies, defendants herein, entered upon the construction of costly works and assumed irrevocable obligations in reliance upon, and dependent upon, delivery of water under their said contracts with the United States and the Statutory Compact between the United States and California entered into, interpreted and applied by the parties thereto as hereinbefore alleged. The investments or obligations of the defendant public agencies in works dependent upon the fulfillment by the United States of these contracts, are tabulated below:

11.

Arizona's Status as a Third Party Beneficiary of the Statutory Compact.

(a) Arizona, as a third party beneficiary of said Statutory Compact, was well and fully aware of the construction, interpretation and application of the said Statutory Compact by the principal parties thereto, to wit, the United States and California, long before Arizona sought to avail herself of any benefits as a third party beneficiary thereof or asserted her present interpretations thereof. Such knowledge on the part of Arizona is disclosed in the pleadings and briefs submitted by that State to this Court in *Arizona v. California, et al.*, 283 U. S. 423 (1931); *Arizona v. California, et al.*, 292 U. S. 341 (1934); and *Arizona v. California, et al.*, 298 U. S. 558 (1936); in the legislative history of the statutes heretofore referred to; in the published reports of the executive departments; and disclosed otherwise by the course of conduct of Arizona in opposing the Boulder Canyon Project, the Colorado River Compact, the construction of Parker Dam, and the appropriations by Congress to construct Hoover Dam and the All-American Canal.

(b) Any rights of Arizona as a third party beneficiary are governed by the said Statutory Compact as interpreted, construed and applied by the principal parties thereto, and said State cannot lawfully assert rights as against either the United States or California, nor can the United States lawfully accord to Arizona benefits inconsistent therewith.

12.

Obligations of the United States.

(a) The United States is bound by the said Statutory Compact and the California water-delivery contracts herein referred to, in accordance with the intent and meaning thereof as evidenced by the contemporaneous interpretations and application thereof as hereinabove alleged, and has the right to, and is obligated to fully perform, such Statutory Compact and contracts in accordance with said intent and meaning. Failure or refusal of the United States to continue to so fully perform its obligations under said Statutory Compact and contracts would result in great and irreparable injury and damage to defendants herein.

(b) The California water-using agencies, defendants herein, have fully performed to date, and are performing, all obligations of all of the said contracts with the United States.

(c) The aggregate of the quantities of water which the United States has agreed in said contracts (subject to availability under the Colorado River Compact and the Boulder Canyon Project Act) to deliver to the defendants from storage is the quantity required to enable them to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of 5,362,000 acre-feet. There are so available for delivery from storage by the United States for permanent service, and for receipt and beneficial consumptive use by the

defendants, without violating the Colorado River Compact or the Boulder Canyon Project Act or the said Statutory Compact, quantities of water at least equal to that amount.

(d) Within the authority and limitation of said Statutory Compact, construed and applied as herein alleged, said contract rights of the defendants, severally and collectively, are senior in time and right to any and all rights which may exist by virtue of contracts between the United States and any other parties for the delivery of water from Hoover Dam storage to, or for use in, Arizona and Nevada, and are senior to all claims of the United States to the right to make consumptive uses of water anywhere in the Colorado River Basin adverse to the claims of California and these defendants, other than those claims of the United States specifically admitted in Paragraph 44 of this Answer.

SECOND AFFIRMATIVE DEFENSE.

Defendants Have Appropriative Rights, Recognized by the Boulder Canyon Project Act and Protected by the Statutory Compact Between the United States and California, to the Beneficial Consumptive Use in California of Not Less Than 5,362,000 Acre-feet of Colorado River System Water Per Annum, Senior to the Claims Made by the United States to Water for Consumptive Use, With Certain Exceptions.

13.

Incorporation by Reference of First Affirmative Defense.

All of the allegations of the First Affirmative Defense of this Answer are referred to and made a part of this Second Affirmative Defense as though fully here set out.

14.

Incorporation by Reference of Portion of Answer to Arizona.

All of the allegations contained in Paragraphs 44 and 45 of the Defendants' Answer to Arizona's Bill of Complaint are referred to and made a part of this Second Affirmative Defense as though here fully set out.

15.

Total Appropriations of Defendants.

(a) Appropriative rights of the defendants, as described in Paragraphs 44 and 45 of their Answer to Arizona's Bill of Complaint, were initiated during the period 1877 to 1926, the greater portion of them antedating 1900.

(b) Prior to June 25, 1929, the defendants herein and other appropriators in California were vested with valid appropriative rights entitling said defendants to the beneficial consumptive use (diversions less returns

to the river) in California, of an aggregate quantity of water from the Colorado River System greatly in excess of 5,362,000 acre-feet per annum. In addition to the projects of the defendants in this action, there are large areas in California readily susceptible of irrigation from the Colorado River System by means of feasible projects for which valid appropriations had been made under the laws of California long prior to the enactment of the Boulder Canyon Project Act. In consequence, however, of the limitation imposed upon California's uses by the said Statutory Compact, California's appropriations, otherwise valid, were restricted by the formula stated in said Statutory Compact to a basis adequate only to supply the amounts required by the Palo Verde Project, the Colorado River Aqueduct, and the All-American Canal. Since that date defendants have been, and now are, vested with valid appropriative rights entitling said defendants to such beneficial consumptive use of an aggregate quantity of water not less than 5,362,000 acre-feet per annum. Said rights were on said date, and are, within, protected by and capable of being satisfied from the beneficial consumptive uses provided for California by the Statutory Compact between California and the United States.

(c) All of said quantity can be put to beneficial consumptive use by the defendant public agencies of California and is required by said defendants for the service of their inhabitants and lands. They have built costly works and assumed irrevocable obligations for that purpose, referred to in Paragraph 10 of this Answer, in reliance upon these appropriations and the recognition thereof in the Colorado River Compact, the Boulder Canyon Project Act, and the Statutory Compact between the United States and California, and have at all times exer-

cised due diligence, and are now exercising due diligence, to use all of the water so appropriated.

16.

Seniority of California's Appropriations.

All of the appropriations of each of the defendants above alleged are senior in time and right to all claims of the United States for the consumptive use of waters of the Colorado River System in any state with the partial exception of certain beneficial consumptive uses which may have been initiated by the United States prior to one or more of the dates of the initiation of defendants' appropriative rights. The exact claims to appropriative rights by the United States are unknown to the defendants, but, upon information and belief, defendants allege that the quantities thereof are not sufficient to interfere with the fulfillment of the appropriative rights of the defendants as such rights are recognized by the Boulder Canyon Project Act and the Statutory Compact.

17.

Present Perfected Rights of California.

(a) Section 6 of the Boulder Canyon Project Act requires the United States to use Hoover Dam and the reservoir thereby created for the purpose, among others, of satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact.

(b) Article VIII of the Colorado River Compact provides, among other things, that:

> "Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any,

by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III."

(c) As of June 25, 1929, the effective date of the Colorado River Compact, the Boulder Canyon Project Act and the Statutory Compact, projects had been constructed and were in operation in California with rights to the beneficial consumptive use of more than 4,950,000 acre-feet per annum of the water of the Colorado River System. Rights to the use of that quantity were part of then vested appropriative rights of the defendants valid under the laws of California, and valid under the Reclamation Laws of the United States, to the beneficial consumptive use of a quantity greatly in excess of 5,362,000 acre-feet per annum of waters of the Colorado River System.

(d) The present perfected rights of the defendants, within the meaning of Article VIII of the Compact and Section 6 of the Boulder Canyon Project Act, as of June 25, 1929, the effective date of said Compact and Act, were not less than 4,950,000 acre-feet per annum.

18.

Conformity With Act and Compacts.

The appropriative rights of the defendants to the beneficial consumptive use of 5,362,000 acre-feet per annum of the waters of the Colorado River System can be satisfied without violating the terms of the Colorado River Compact, the Boulder Canyon Project Act or the Statutory Compact between the United States and California and are recognized and confirmed by their water delivery contracts with the United States.

TRAVERSE OF THE ALLEGATIONS OF THE PETITION.

19.

Incorporation by Reference of First and Second Affirmative Defenses.

All of the allegations of the First and Second Affirmative Defenses of this Answer are referred to and made a part of this Traverse of the Petition for Intervention of the United States as though here fully set out.

Traverse of Part One: Introduction and Background.

20.

Answering Paragraph I of the Petition of Intervention on Behalf of the United States of America, defendants admit the allegations thereof are substantially correct, but allege that the rights, interests and claims of Arizona and defendants referred to in said paragraph relate to the use of waters of the Colorado River System as defined in Article II of the Colorado River Compact, and not merely to the waters of the main stream of the Colorado River. Defendants also call attention to the fact that subsequent to the filing of the Petition for Intervention of the United States, the State of Nevada, on December 14, 1953, filed its Motion for Leave to Intervene and Petition of Intervention, claiming as follows:

> ". . . The State of Nevada being a signatory to the Colorado River Compact, and being one of the Lower Basin States defined in said Compact and being a user of and entitled to the right to the beneficial consumptive use of a portion of the Colorado River System water is, by reasons thereof, an indispensable party to this suit . . ."

21.

Answering Paragraphs II and III of said Petition, admit that the allegations of said paragraphs are substantially correct, but allege that Arizona, in the present action seeks to quiet title not only as against the defendants, but also as against the other States of the Colorado River Basin.

22.

Answering Paragraphs IV, V, and VI of said Petition, admit that the allegations of said paragraphs are substantially correct.

23.

Answering Paragraph VII of said Petition, allege that the facts therein referred to are set forth with more particularity and accuracy in Paragraphs 3 and 4 of the Answer of Defendants to Arizona's Bill of Complaint in this action.

24.

Answering Paragraph VIII of said Petition:

(a) Deny all of the allegations of said paragraph except insofar as said allegations conform to the allegations of this paragraph of this Answer.

(b) Deny that enactment by California of a Limitation Act was a condition to the requisite Congressional consent to a Seven-State Compact, and allege that such was a condition only to Congressional consent to a Six-State Compact.

(c) Allege that the proposed Seven-State Compact never became effective, but that, in the manner described in the First Affirmative Defense, a Six-State Compact

among California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and a Statutory Compact between the United States and California, did become effective June 25, 1929.

(d) Deny that the State of Arizona, on February 24, 1944, or at any other time, effectively ratified the Colorado River Compact either as a Seven-State or Six-State agreement. Allege that the Congress has consented to a Six-State Compact but not, after June 25, 1929, to a Seven-State Compact.

25.

Answering Paragraph IX of said Petition, allege that the provisions of the Colorado River Compact are set forth with more particularity in Paragraphs 5 to 15 inclusive of the Answer of Defendants to Arizona's Bill of Complaint. The text of that Compact appears in Appendix 1.

26.

Answering Paragraph X of said Petition, admit that the Upper Colorado River Basin Compact was signed October 11, 1948, and became effective April 6, 1949. Allege that said Upper Colorado River Basin Compact is, by its terms, subject to the Colorado River Compact proclaimed effective June 25, 1929, as a Six-State Compact among California, Colorado, Nevada, New Mexico, Utah and Wyoming. Allege that California is not a party to the Upper Colorado River Basin Compact, and that neither California nor the United States is bound by any provision thereof nor any interpretation of the Colorado River Compact appearing or implied therein. Allege that the interpretation and admjnistration of the Upper Colo-

rado River Basin Compact will be controlled by the interpretation of the Colorado River Compact in the present action.

27.

Answering Paragraph XI of said Petition, admit the allegations of said paragraph, but allege that the purported contract dated February 9, 1944, between the United States and the State of Arizona was entered into after signature and publication, and with full knowledge of the terms of the Treaty between the United States of America and the United Mexican States which had been executed by the plenipotentiaries of the respective countries on February 3, 1944 (Treaty Series 994; 59 Stat. 1219). Certain of the terms of that Treaty are recited in Paragraph 29 of this Answer.

Traverse of Part Two: Interests of the United States of America in the Colorado River System.

28.

Answering Paragraph XII of said Petition, admit and allege that it is important to all the parties that this court resolve the issues framed by all the pleadings on file herein. Allege further with respect to the five categories of interests of the United States set forth under subparagraphs A, B, C, D, and E of said Paragraph XII, that a determination of the rights, responsibilities and duties of the United States with respect to each of these categories will affect the interests of all of the States of the Colorado River Basin, as well as of the complainant and defendants herein. To the extent that Paragraph XII of said Petition incorporates by reference Paragraphs XIII through XXX thereof, defendants incorporate herein

by reference the allegations, admissions and denials of Paragraphs 29 through 44 of this Answer to the Petition of Intervention on Behalf of the United States:

29.

Answering Paragraph XIII of said Petition:

(a) Deny that the obligations of the United States under the Treaty with the United Mexican States are accurately alleged in said paragraph.

(b) Allege that said Treaty allots to Mexico a guaranteed annual quantity of 1,500,000 acre-feet of water, from any and all sources in the Colorado River System within the United States, as well as any other quantities arriving at the Mexican points of diversion on the Colorado River. Said Treaty also provides that in any year in which there exists a surplus of waters of the Colorado River System in excess of the amount necessary to supply all uses in the United States and the guaranteed quantity to Mexico, the United States will deliver additional waters of the Colorado River System so as to provide a total quantity not to exceed 1,700,000 acre-feet in such year. Allege that said guaranteed quantity of 1,500,000 acre-feet may be reduced in the event of extraordinary drought or serious accident to the irrigation system in the United States, in the same proportion as consumptive uses in the United States are reduced. Allege that the term "any and all sources" includes all the waters of the Colorado River System, including those of the Gila River and its tributaries.

(c) Allege that the Treaty definitions relating to "consumptive use" are as follows:

Article I(j): "'Consumptive use' means the use of water by evaporation, plant transpiration or other

manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream."

Article I(d): "'To divert' means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods."

Article I(h): "'Return flow' means that portion of diverted water that eventually finds its way back to the source from which it was diverted."

and allege that said definition is binding upon the United States and the States of the Colorado River Basin and is confirmatory of the meaning of "consumptive use" in the Colorado River Compact and the Boulder Canyon Project Act.

(d) Allege that Article III(c) of the Colorado River Compact provides that the waters to be delivered to Mexico shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in Paragraphs (a) and (b) of Article III, and if such surplus shall prove insufficient, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to their obligation, stated in Paragraph (d) of Article III, not to cause the flow of the River at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for

any period of ten consecutive years reckoned in continuing progressive series commencing October 1, 1929. Allege that the United States, in conformity with the Mexican Water Treaty and said Compact, is obligated to make delivery to Mexico first from the waters surplus to those specified in Paragraphs (a) and (b) of Article III of said Compact, utilizing for that purpose first the waters which may be available without violation of the provisions of the Statutory Compact between the United States and California which recognize the right in California to the use of one-half of all waters in excess of those apportioned by Article III(a) of the Colorado River Compact. Allege that if the waters surplus to those specified in Paragraphs III(a) and III(b) of the Colorado River Compact shall prove insufficient to supply the water required to be delivered to Mexico, then the United States is obligated to deliver the deficiency to the extent of one-half by reduction of the beneficial consumptive uses apportioned to the Upper Basin by Article III(a) of said Compact, and one-half by reduction of the "increase of use" permitted to the Lower Basin by Article III(b) of said Compact.

30.

Answering Paragraph XIV of said Petition:

(a) Admit all of the allegations thereof not herein specifically denied.

(b) Deny that said Paragraph XIV fully or accurately states the objectives of the Boulder Canyon Project Act. Allege that Section 1 of that Act authorized the construction of Hoover Dam and the All-American Canal

". . . for the purpose of controlling the floods, improving navigation and regulating the flow of the

Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, . . ."

Section 6 of that Act directs that:

". . . the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. . . ."

Section 9 of that Act, referring to the All-American Canal, directs that the public lands ". . . practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry," and thereafter opened for entry under the reclamation law with preference to veterans.

Sections 8(a), 13(b), (c), (d) of that Act subjected all the rights of the United States, and of those claiming under it, to the Six-State Colorado River Compact.

(c) Further answering Paragraph XIV of said Petition, admit that, pursuant to the statutes therein referred to, the United States has undertaken the construction of large projects in the Lower Basin involving the expenditure of several hundred million dollars, but allege that the expenditure of substantially all of the said sum in the construction of the projects enumerated in said Paragraph XIV, with the sole exception of Davis Dam, was, by the

terms of Section 4(b) of the Boulder Canyon Project Act and by the terms of the Reclamation Law, conditioned upon and made possible by the assumption by the defendants, and other entities in California, of the obligation to repay the cost thereof, and that defendants incurred said obligations in reliance upon agreements with the United States recited in the First Affirmative Defense of this Answer. These works, the obligations which the defendants and other California entities have assumed to make possible their construction by the United States, and the additional expenditures which the defendants have made from their own funds (amounting together to more than $600,000,000) to enable them to discharge said obligations, are described in Paragraph 10 of this Answer, and in Exhibits A, B and C accompanying Defendants' Answer to Arizona's Bill of Complaint.

Traverse of Part Three: Specific Response of the United States of America to the Pleadings of the Parties.

31.

Answering Paragraph XV of said Petition, allege that the contracts referred to therein are described with more particularity in the First Affirmative Defense of this Answer, and in the Appendixes enumerated in said Affirmative Defense. Deny that the quantity of water to which defendants are entitled under said contracts is as stated in said Paragraph XV of said Petition, and allege that the United States is obligated pursuant to the Statutory Compact and said Contracts to deliver, at the defendants' points of diversion on the Colorado River, so much water (including all other water diverted by the defendants for use within the State of California from the Colorado River

System), as may be necessary to enable defendants to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of 5,362,000 acre-feet.

32.

Answering Paragraph XVI of said Petition, admit the allegations of said paragraph and allege that the facts relating to the Seven-Party Agreement and the terms thereof are more fully set forth in the First Affirmative Defense of this Answer and in Paragraphs 32 and 33 of the Answer of Defendants to Arizona's Bill of Complaint. The text of the Seven-Party agreement appears in Appendix 10.

33.

Answering Paragraph XVII of said Petition, admit the allegations of said paragraph. Allege that the deliveries of water to the Metropolitan Water District of Southern California are inclusive of the deliveries to the City of San Diego.

34.

Answering Paragraph XVIII of said Petition, deny the allegations of said paragraph, and allege that the quantity of water covered by the contracts between the United States and the State of Nevada referred to in said paragraph (subject to availability for use in Nevada under the Colorado River Compact and the Boulder Canyon Project Act) is "so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year."

35.

Answering the allegations of Paragraph XIX of the Petition:

(a) Admit that on February 9, 1944, the Secretary of the Interior signed a purported contract with the State of Arizona for the storage and delivery of water, but deny that the same is valid or effective.

(b) Deny that said purported contract provided for the delivery annually of 2,800,000 acre-feet or any other specific quantity of water, and allege that it purported only to provide for the delivery, under specified terms and conditions, of water which, when added to other quantities used by Arizona, would not exceed a maximum of 2,800,000 acre-feet per annum. Said contract also makes reference to the availability to Arizona of one-half of the excess or surplus waters unapportioned by the Colorado River Compact.

(c) Allege that said purported contract contained the following, among other provisions, and that if said contract has any validity or effect, the United States and Arizona are bound as follows:

> Article 7. "(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies."

"Article 10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III(a) of the Colorado River Compact; (3) what part, if any, is within Article III(b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III(a) of the Colorado River Compact between the Upper Basin and the Lower Basin."

"Article 18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act such definitions shall apply in construing this contract."

(d) Allege that all deliveries under said purported contract are subject to the rights of the defendants to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of waters of the Colorado River System.

(e) Allege that said purported contract was executed after signature of the Mexican Water Treaty and with knowledge of its terms, and that if said contract has any validity or effect the United States and Arizona are bound by the definition of consumptive use, and other terms, ap-

pearing in said treaty, in the interpretation and administration of that contract.

(f) With respect to the contract dated March 4, 1952, between the United States and Wellton-Mohawk Irrigation and Drainage District, allege that said contract, and, upon information and belief, all other water delivery contracts between the United States and users in Arizona, fail to refer in any manner to the purported contract dated February 9, 1944, between the United States and the State of Arizona, and are not, in terms, made subject thereto, but do provide for the use of Colorado River System water.

36.

Answering Paragraph XX of said Petition, defendants deny that the quantity of water covered by the contracts referred to in Paragraph XX of said Petition is correctly stated in said Paragraph XX, and refer to Paragraphs 31, 34 and 35 of this Answer to the Petition of Intervention on Behalf of the United States. Admit that controversies exist between Arizona and the defendants herein, but deny that the subjects of said controversies are fully or accurately set out in Paragraphs XXXI through XXXIX of said Petition, and allege that said controversies are more fully stated in Exhibit A to this Answer. Allege further that the determination of a number of these controversies will affect the interest of all of the States of the Colorado River Basin in and to the waters of the Colorado River System.

37.

Answering Paragraph XXI of said Petition, admit the allegations of said paragraph, and allege that certain of

the defendants, and other entities authorized by the laws of California, have entered into contracts with the United States requiring the payment to the United States of large sums for said electric energy generated at Hoover Dam as alleged in Paragraph 10 of this Answer. Allege further that under the Boulder Canyon Project Act, Section 4(b), the Secretary of the Interior, for the United States, was required to make contracts, in advance of any appropriations or expenditures, adequate to insure repayment of the costs of construction of the project, and the costs of operation and maintenance. Allege that the contracts made by the United States under such Act to insure such repayment were entered into with the defendants and other California entities, and made possible the Boulder Canyon Project and related works to which Arizona made no contribution.

38.

Answering Paragraph XXII of said Petition, admit the allegations of said paragraph and allege that the works therein referred to are described with more particularity in Exhibit "C" to the Answer of Defendants to Arizona's Bill of Complaint.

39.

Answering Paragraph XXIII of said Petition, deny that the State of Arizona is a party to the contract therein referred to between the United States and the Wellton-Mohawk Irrigation and Drainage District. Admit that the other allegations of said paragraph are substantially correct.

40.

Answering Paragraphs XXIV, XXV and XXVI of said Petition, admit the allegations of said paragraphs.

41.

(a) Answering Paragraph XXVII of said Petition and Appendix II-A thereto, defendants refer to Paragraph 51 of this Answer and allege that defendants are without information or belief as to the extent of the rights of Indians or Indian Tribes to the use of water of the Colorado River System, and placing their denial on that ground, deny that the rights claimed in said Petition by the United States as trustee for said Indians or Indian Tribes are as set forth in Appendix II-A to said Petition. Defendants note that the claims tabulated therein are stated in terms of "Diversions," and allege that the Colorado River Compact relates to beneficial consumptive use, not diversions; allege that the Boulder Canyon Project Act defines consumptive use as "diversions less returns to the river"; and allege that said definition and the amplification thereof contained in Article I of the Mexican Water Treaty is binding upon the United States. Defendants allege that it is necessary for the United States to state and prove its claims on behalf of Indians in terms of beneficial consumptive use, place of use, and alleged priority, with respect to each of said claims wheresoever located in the Colorado River Basin.

(b) Further answering said Paragraph XXVII, allege that no priority attaches to any claims of the United States to the use of water of the Colorado River System for or by Indians and Indian Tribes, in consequence of the Indian status of the users, that such claims would not possess in the absence of such status.

(c) Allege that any and all uses of water by Indians or Indian Tribes pursuant to obligations of the United States to such Indians or Indian Tribes are chargeable under the Colorado River Compact and the Boulder

Canyon Project Act to the Basin and to the State in which such uses are situate; and, at least, to the extent that such rights existed on June 25, 1929, are chargeable under Article VIII(a) of that Compact.

(d) Allege that Article VII of the Upper Colorado River Basin Compact (Act of April 6, 1949, 63 Stat. 31), which has been ratified by Arizona, Colorado, New Mexico, Utah, and Wyoming and to which the Congress has consented, provides with respect to water available for use in that Basin under the Colorado River Compact, that:

> "The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made . . ."

That Compact is subject, by its terms, to the Colorado River Compact as proclaimed by the President June 25, 1929.

(e) Allege that rights in the United States to beneficial consumptive uses of water, in quantities unknown to defendants, for and on behalf of Indians and Indian Tribes, exist throughout the entire Colorado River System, and are not confined to the Lower Basin. Allege that any determination as to the status, methods of measurement, and tests of priority of Indian rights in the Lower Basin will apply with equal force and effect to Indian rights in all States of the Colorado River Basin.

42.

Answering Paragraph XXVIII of said Petition and Appendix III thereto:

(a) Deny that any treaty to which the United States is a party authorizes it to make consumptive use of the

water of the Colorado River System for the support of fish or wildlife, and allege that no treaty or federal statute has undertaken to authorize any officer of the United States so to do.

(b) Allege that the United States, in Sections 8(a) and 13(b), (c), and (d) of the Boulder Canyon Project Act, subjected its rights and the rights of those claiming under it to the Colorado River Compact, and that these statutory provisions are applicable to uses for the benefit of fish and wildlife.

(c) Allege that, pursuant to the provisions of Article IV of the Colorado River Compact, if any right exists to the consumptive use of water for the support of fish and wildlife, such right is subservient to the use and consumption of water for agricultural and domestic purposes and for the generation of electric energy, and that the rights of the defendants are of these dominant categories.

(d) Allege that if the United States has rights to the consumptive uses of water for the support of fish and wildlife, such uses are chargeable under the Colorado River Compact to the Basin and to the State in which such uses are situate, and, at least, to the extent that such rights existed on June 25, 1929, are chargeable under Article III(a) of the Compact.

43.

Answering Paragraph XXIX of said Petition, admit that the statutes require Hoover Dam, Davis Dam and Parker Dam to be operated, for the purposes, among others, stated in Section 6 of the Boulder Canyon Project Act, of controlling the floods, improving navigation and regulating the flow of the Colorado River, and admit that

the waters impounded by those structures are required to be administered to effectuate said purposes, among others stated in said statutes, subject, however, to the terms of the Mexican Water Treaty. Defendants refer to Paragraph 30 of this Answer for a more complete statement of the relationship of these functions to other functions authorized in the Boulder Canyon Project Act.

44.

(a) Answering the allegations of Paragraph XXX of said Petition, deny that the United States has any rights to the use of water of the Colorado River and its tributaries as against the defendants, except as the same are specifically admitted in this Answer, and deny all other allegations of Paragraph XXX not specifically admitted.

(b) Answering the allegations of the first unnumbered subparagraph of said Paragraph XXX, which itemizes four categories of claims, lettered respectively (a), (b), (c), (d):

1. Referring to the claims under category "(a)," defendants deny that the United States has, as against the defendants or otherwise, any rights to the use of water for the projects stated in the said Petition and its Appendixes or any other projects in the Colorado River Basin (other than projects which are for the use of Indians) except rights which are subject to and controlled by the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California; and allege that to the extent that water is delivered by the United States to the defendants under contracts between the United States and the defendants for the delivery of stored water, such delivery is

not made in discharge of any right or claim of the United States adverse to California, but in satisfaction of the rights of the defendants recognized by said Act and Compacts and established, confirmed and administered under their respective contracts with the United States, all as stated in the First Affirmative Defense of this Answer. Allege that to the extent that the United States claims rights to the use of water to the full capacity of diversion, carrying and storage structures described in said Petition and its Appendixes, the present and future interests of all of the States of the Colorado River Basin are affected.

2. Referring to the claims under category "(b)," defendants admit that the United States has rights to the use of water of the Colorado River and its tributaries, as against the parties to this cause, to fulfill its valid obligations arising from its international treaties or obligations, but allege that such rights are not only as against complainant and defendants, but also as against the other States of the Colorado River Basin. Allege that no international treaty or obligation authorizes or requires the United States or any officer or employee thereof to breach or evade any obligation to the defendants. Deny that the United States has any right to the use of water of the Colorado River or its tributaries, as against the defendants, to fulfill any obligations it may have assumed by its contracts with others to deliver water and electric power, except as the same may be consistent with the terms of the Colorado River Compact, the Boulder Canyon Project Act, and the Statutory Compact between the United States and California, consistent with and subject to the contracts between the United States and the defendants referred to in the First Affirmative Defense of

this Answer, and consistent with and subject to the rights of the defendants alleged in the Second Affirmative Defense of this Answer.

3. Referring to the claims under category "(c)," defendants admit that the United States has rights, as against the parties to this cause, to the use of water in the Colorado River and its tributaries to fulfill the obligations emanating from its status as trustee for the Indians and Indian Tribes, but allege that such rights are not only as against complainant and defendants but also as against all other States of the Colorado River Basin. As to the nature and extent of such claims defendants here incorporate by reference Paragraph 41 of this Answer.

4. Referring to the claims under category "(d)," defendants admit that the United States has rights to the use of water in the Colorado River and its tributaries, as against the parties to this cause, to protect its interests in flood control and navigation to the extent that the same are necessary and have been specifically authorized by Acts of Congress, subject, however, to the provisions of the Mexican Water Treaty, but allege that such rights are rights not only as against complainant and defendants but also as against all other States of the Colorado River Basin. With reference to the allegations concerning fish and wildlife, defendants incorporate by reference Paragraph 42 of this Answer.

Inasmuch as the United States, in Paragraph XXX of its Petition, does not identify any of the enumerated claims therein with respect to quantity, place of use or priority, the admissions made with respect to them in this Answer do not relate to any specific quantity, place of

use or priority, and the defendants reserve the right to require proof thereof at the trial of this action.

(c) Aswering the allegations of the second unnumbered subparagraph of Paragraph XXX, defendants admit that the aggregate of the claims to the beneficial consumptive use of water in the five States in the Lower Basin, including the claims of the United States, exceeds the quantity of water, the beneficial consumptive use of which is apportioned to the Lower Basin of the Colorado River by the Colorado River Compact; allege that the amount so apportioned is 7,500,000 acre-feet per annum as stated in Article III(a) of the Colorado River Compact, and allege that said aggregate claims also exceed any probable quantity of water of the Colorado River System which may be permanently available for beneficial consumptive use in the Lower Basin, including both the water apportioned to the Lower Basin by Article III(a) of the Colorado River Compact and the excess or surplus water, the use of which is unapportioned by said Compact, including in such excess or surplus the increase of use permitted to the Lower Basin by Article III(b) of said Compact. Deny that a resolution of the controversy as contended for by defendants will infringe upon the interests of the United States to its detriment.

(d) Answering the allegations of the third unnumbered subparagraph of said Paragraph XXX, defendants have no knowledge or information sufficient, to form a belief as to the claims of the United States therein referred to for use of the National Park Service, Bureau of Land Management or Forest Service, and, placing their denial on that ground, deny said claims, and allege that the United States by the Boulder Canyon Project Act has

subjected its rights, and the rights of those claiming under it, to the provisions of the Colorado River Compact; allege that the rights of the defendants to the use of the water of the Colorado River System are prior and superior to said claims; allege that uses under said claims, if effected, will be chargeable under the Colorado River Compact to the Basin and the State in which they are situate; and allege that at least to the extent such rights existed on June 25, 1929, uses thereunder are chargeable under Article III(a) of the Colorado River Compact.

(e) Answering the allegations of the fourth unnumbered subparagraph of said Paragraph XXX, defendants deny the accuracy of the allegations of said subparagraph, and allege that, due to the insufficient supply of water permanently available to the Lower Basin under the Colorado River Compact to meet the aggregate of the claims to the uses in the Lower Basin of the waters of the Colorado River System, there is need for a decree of this Court determining the controversies disclosed by the pleadings in this cause. Allege further that a resolution of the controversy between complainant and defendants with respect to the interpretation of the various compacts, acts, contracts and other documents pleaded in this cause, and of the claims of the United States as alleged by the United States to be involved, will necessarily affect all of the states of the Colorado River Basin.

45.

(a) Answering the allegations of Paragraph XXXI(a) of said Petition: Deny all of the allegations of said paragraph not specifically admitted. Admit that the treaties and international conventions alluded to are valid and enforceable obligations binding the United States and all

parties to this cause, but deny that such treaties and conventions have the effects ascribed to them in said Petition, and refer to the defendants' allegations with respect thereto in Paragraphs 29, 42 and 44 of this Answer. Admit and allege that the Colorado River Compact is a valid and binding covenant among only the six States named in the Presidential proclamation of June 25, 1929, to wit, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and allege that the same is binding upon the United States. Admit that the Reclamation Act of 1902 and such acts amendatory thereof and supplemental thereto as are referred to in the pleadings in this cause, as well as the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act, are valid and enforceable enactments pursuant to which all of the parties to this cause, and all of the States of the Colorado River Basin, have received benefits. Admit and allege that contracts of the defendants with the United States involving the use and delivery of water and electric power are valid and binding upon the parties thereto.

(b) The allegations of Paragraph XXXI(b) do not appear to require answer by these defendants.

46.

Answering Paragraph XXXII of said Petition, deny that the questions in this controversy or their effect measured in acre-feet per annum are fully or accurately stated therein, and allege that the controversy, as developed in the pleadings to date, is summarized in Exhibit "A" annexed hereto, and herein incorporated by reference as though fully stated.

47.

Answering Paragraph XXXIII of said Petition:

(a) Deny that the quantity of water available to the Lower Basin under the Colorado River Compact is 8,500,000 acre-feet per annum, and allege that the quantity so available (subject to the terms of the Mexican Water Treaty), is in excess of that amount, and comprises the following:

1. Not less than an aggregate of 75,000,000 acre-feet for any period of ten consecutive years from and after October 1, 1929, measured at Lee Ferry, resulting from the obligation assumed in Article III(d) of the Colorado River Compact by the States of the Upper Division not to deplete the flow of the river at that point below that quantity. In addition:

2. Such quantities as may be required to flow from the Upper Basin into the Lower Basin in consequence of (i) the Statutory Compact between the United States and California, (ii) the obligation assumed by the States of the Upper Division in Article III(e) of the Colorado River Compact that they shall not withhold water which cannot reasonably be applied to domestic and agricultural uses, and (iii) prior appropriations in the Lower Basin not inconsistent with the apportionment made to the Upper Basin in Article III(a) of that Compact. In addition:

3. Such quantities as may be made available by the temporary draw-down of the reservoirs in the Lower Basin, consistent with the statutory directions as to

the functions of those reservoirs, notably Hoover Dam (Lake Mead). In addition:

4. The waters of the tributaries of the Colorado River in the Lower Basin, available for beneficial consumptive use. The waters of the tributaries so available aggregate approximately 3,000,000 acre-feet per annum. Of this amount, approximately 2,000,000 acre-feet per annum are available at places of use on the tributaries which make up the Gila River System in Arizona and New Mexico and 1,000,000 acre-feet per annum are available at places of use on other tributaries, particularly the Virgin River in Nevada and Utah, and the Little Colorado, Bill Williams, and miscellaneous other tributaries, in Arizona.

(b) Allege that the amount of 8,500,000 acre-feet, referred to in Paragraph XXXIII of said Petition, relates only to the aggregate of the beneficial consumptive uses governed by Articles III(a) and III(b) of said compact, but has no relation to either the quantities of water physically available in the Lower Basin or to the total quantities of the uses which may lawfully be made of the available water.

(c) Admit that the aggregate of the claims to rights to the beneficial consumptive use of water of the Colorado River System in the Lower Basin by claimants in Arizona, California, Nevada, Utah and New Mexico, exceeds 8,500,000 acre-feet per annum, and exceeds also the much larger quantity which is physically and lawfully available for permanent use in the Lower Basin.

Allege that the claim of Arizona to 3,800,000 acre-feet of beneficial consumptive use per annum of the water

of the Colorado River System measured in terms of "main stream depletion," is equivalent to more than 5,000,000 acre-feet measured at the place of use in terms of diversions less returns to the river.

(d) Allege that all of the water permanently available for beneficial consumptive use in the Lower Basin will be required to satisfy the rights of projects heretofore constructed or authorized in that Basin, with reasonable allowance for the future requirements of Nevada, Utah and New Mexico.

48.

Answering Paragraph XXXIV of said Petition:

Defendants concur in the request of the United States that the conflict with respect to the Boulder Canyon Project Act be resolved; extend this request to include the conflict with reference to the Colorado River Compact and the Statutory Compact between the United States and California; allege that the conflicts with reference to all three enactments are substantially as summarized in Exhibit A to this Answer; and allege that these conflicts involve the rights, responsibilities and obligations of the United States with respect to the entire Colorado River System and not merely the Colorado River, if that term in said Petition is intended to refer only to the main stream, and further, involve the rights and obligations of the United States with respect to all of the States of the Colorado River Basin.

49.

Answering Paragraph XXXV of said Petition, allege that the Secretary of the Interior on behalf of the United States contracted to deliver water from storage to defen-

dants in the amounts and on the terms set forth in the First Affirmative Defense of this Answer, and allege that said contracts are valid and binding and that the United States has the right and the duty to perform its obligations with respect to the Colorado River System in such way as to enable it to fulfill its contracts with defendants according to the terms thereof. Deny the allegations of said paragraph as they relate to the purported contract between the United States and Arizona dated February 9, 1944.

50.

Answering Paragraph XXXVI of said Petition:

With reference to the allegations of said paragraph concerning the purported ratification of the Colorado River Compact by Arizona on February 24, 1944, and the purported contract between the State of Arizona and the Secretary of the Interior dated February 9, 1944, defendants refer to Paragraphs 24 and 35 of this Answer, and in more detail, to Paragraph 59 of their Answer to Arizona's Bill of Complaint, which they here incorporate by reference. Deny that the United States is under any obligation or responsibility to the State of Arizona or any user of water in that State in consequence of either of those events.

51.

Answering Paragraph XXXVII of said Petition, defendants refer to Paragraph 41 of this Answer, and:

(a) Noting the allegation that the rights to the beneficial consumptive use of water by Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact, allege that Article VII of the Colorado

River Compact merely provides that nothing in said Compact shall be construed as affecting the obligations of the United States to Indian Tribes, but does not provide or imply that beneficial consumptive uses by Indian Tribes are not chargeable under said Compact to the Basin and the State in which they are situate in like manner as uses by others are charged. Allege that if the rights of Indians are not subject to and protected by the Colorado River Compact, they are subject to prior appropriations of other users in the Colorado River Basin, including those of these defendants.

(b) Join in the request of the United States that this Court declare and determine the rights of the Indians and Indian Tribes, but allege that the conflicts on this issue extend to the entire Colorado River System and not merely to the Lower Basin, and that the United States cannot exercise the claims which it asserts for itself and on behalf of Indians and Indian Tribes or perform its duties, not only with respect to Indians and Indian Tribes but also with respect to those with whom it has made contracts to store and deliver water, until such conflicts have been resolved. Defendants refer to the conflicts arising from the assertion in Paragraph XXVII of the Petition and its Appendix II-A of claims on behalf of Indians in terms of diversion rights and not beneficial consumptive uses, refer to the conflicts arising from the denial by the United States, in Paragraph XXXVII of its Petition, of the allegation of the defendants that all beneficial consumptive uses by Indians are chargeable to the beneficial consumptive uses available to the Basin under the Compact, and to the State, in which such uses are situate, refer to the provisions of Article VII of the Upper Colorado River Basin Compact quoted in

Paragraph 41 of this Answer, and refer to Section 13(b) of the Boulder Canyon Project Act, as well as the allegation made in Paragraph XXXVII of the Petition that uses by Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact. Defendants point to the resulting uncertainty as to (1) the beneficial consumptive uses claimed on behalf of Indians, (2) what quantities, if any, the United States may withhold from delivery to the Lower Basin by reason of its claims on behalf of Indians in the Upper Basin, (3) whether uses by Indians in both the Upper and Lower Basins are permissible in addition to the uses chargeable to such Basin under the Colorado River Compact or are chargeable as a part thereof, (4) the effect upon the obligations of the States of the Upper Division under Articles III(d) and III(e) of that Compact, (5) the extent to which such Indian claims may be affected by prior appropriations of others, including these defendants, and, finally, (6) whether, if the claims of the United States on behalf of Indians are sustained, the Colorado River Compact is capable of performance by any State.

(c) Allege that the determination of the issues tendered by the Petition in Paragraph XXXVII thereof will necessarily affect the substantial interests of all of the States of the Colorado River Basin.

52.

Answering Paragraph XXXVIII of said Petition, defendants deny each and every allegation of fact in said Petition which is substantially at variance with or contrary to the facts alleged in this Answer, in the pleadings of the defendants directed to those of Arizona and Nevada, and in the Exhibits and Appendixes to those pleadings of the defendants.

53.

As to Intervener's Appendix I, defendants allege as follows:

1. Referring to the allegations relating to Parker Dam (Pet. p. 45), defendants allege further that said dam was constructed by the United States with funds advanced to it by The Metropolitan Water District of Southern California, without reimbursement. The United States reserved the right to one-half the power privilege created by said dam. The facts with respect to Parker Dam are alleged with more particularity in Exhibit A to Defendants' Answer to Arizona's Bill of Complaint.

2. Referring to the allegations relating to the All-American Canal System, which includes the Coachella Canal (Pet. pp. 47 to 49, incl.), defendants allege that pursuant to contract dated December 1, 1932 (Appendix 13) as supplemented by contract dated March 4, 1952, entered into between the United States and Imperial Irrigation District (Appendix 18), Imperial Irrigation District has assumed the care, operation and maintenance of the main All-American Canal and the upper fifty miles of the Coachella Canal, and that the care, operation and maintenance of the remaining distance of the Coachella Canal has been assumed by the Coachella Valley County Water District pursuant to a contract entered into between the United States and that district dated October 15, 1934 (Appendix 16.)

3. Referring to the allegations relating to the area irrigated within the boundaries of Imperial Irrigation District (Pet. p. 49), defendants allege the fact to be that in the year 1951, the gross area irrigated amounted to approximately 600,000 acres of land and not 425,000 acres as therein stated.

4. Referring to the allegations relating to the Colorado River Aqueduct (Pet. p. 49), defendants allege the fact to be that the Colorado River Aqueduct will have a maximum carrying capacity of 1800 c.f.s. and not 1605 c.f.s. as therein stated.

5. Referring to the allegations relating to the San Diego Aqueduct (Pet. p. 50), defendants allege the facts to be that the San Diego Aqueduct is operated and maintained in part by the San Diego County Water Authority and in part by the Metropolitan Water District of Southern California and these agencies are sharing in repayment to the United States of the entire cost of said aqueduct.

54.

Prayer.

Wherefore, defendants pray:

1. That the rights and interests of defendants as against all parties to this cause, including the United States of America, be adjudged and decreed, as alleged herein;

2. That the Court grant to defendants such other and further relief as to the Court may seem meet and proper;

3. That in consequence of the disagreement of the parties on complex questions of fact and law, this Court appoint some suitable person as Special Master and refer this cause to such Special Master with authority to take evidence and to report the same to the Court with his findings of fact, conclusions of law and recommendations for decree, all to be subject to review and approval or other disposal by this Court.

The defendants also respectfully pray leave to amend this Answer if that should hereafter become appropriate or necessary during the course of the proceedings in this cause.

Respectfully submitted,

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EXHIBIT A.

Summary of the Controversy

The pleadings filed by Arizona, Nevada, the United States and California, to date, disclose complex questions of fact and law, many of which are interrelated. The summary of principal questions presented below is divided into four parts: (I) the quantities of water in controversy; (II) the ultimate issues, from the standpoint of the respective prayers; (III) a tabulation of factual issues; and (IV) the issues of interpretation of the basic documents involved. Under this division, certain questions reappear and to this extent reflect the interlocking nature of the problem.

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by

"diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-

called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.*, with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to

this cause" for these functions. such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River,

and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to

in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wild life, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what

process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i.e.*, "rights which may now exist"; whether Indian rights and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consumptive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as Cali-

fornia contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this court in Arizona v. California *et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of

the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact, the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.*, 1922, 1929, or some other date; the definition

of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess

or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.